

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

THE LOCAL SPOT, INC., *et al.*,)
Plaintiffs,)
v.) Case No. 3:20-cv-00421
JOHN COOPER, *et al.*,) Judge Richardson
Defendants.) Magistrate Judge Newbern

TOOTSIE'S ENTERTAINMENT, LLC)
d/b/a TOOTSIE'S ORCHID LOUNGE,)
et al.,)
Plaintiffs,)
v.) Case No. 3:21-cv-00501
JOHN COOPER, in his official) Judge Richardson
capacity as Mayor of Metropolitan) Magistrate Judge Newbern
Nashville-Davidson County, *et al.*,)
Defendants.)

JOINT MOTION TO MODIFY CASE MANAGEMENT ORDER
AND FOR A CASE MANAGEMENT CONFERENCE

The Parties respectfully request that the Court extend the discovery deadline in this case to accommodate four additional depositions that could not be held by the current discovery deadline due to illness and one witness's schedule. The Parties also request a case management conference to discuss their varied positions on what additional discovery may be needed in this case and whether other deadlines should be extended in light of the Court's earlier Order staying certain portions of the proceedings under the *Younger* abstention doctrine. Plaintiffs seek an indefinite extension of the discovery deadline when a case management conference is held, while the Metro Defendants assert that only a limited extension should be granted.

In support of this Motion, the Parties state as follows:

1. The current deadline to conclude fact discovery is November 4, 2022. (Order granting Motion to Amend the Case Management Order, Doc. No. 207.)

2. The parties have substantially completed written discovery concerning all facets of the case not subject to a stay.

3. From October 26, 2022, through November 3, 2022, the Parties took twelve depositions, including depositions of both individual Plaintiffs, a 30(b)(6) deposition of Plaintiff The Local Spot, Mayor John Cooper, numerous Metropolitan Government employees, and numerous employees of Plaintiff Steve Smith's establishments. Two additional depositions are scheduled to be taken on November 4.

4. Drs. Alex Jahangir and Gill Wright were also scheduled to be deposed the week of October 31. Because lead counsel for the Metro Defendants, who was scheduled to defend those depositions, became ill over the weekend, the Plaintiffs accommodated the Metro Defendants' request to reschedule those two depositions. Because of the rescheduling of Drs. Jahangir and Wright's depositions, Plaintiffs requested to reschedule Leslie Waller's deposition, and the Metro Defendants accommodated that request.

5. The Parties have conferred and agreed upon dates for the rescheduled depositions. The Parties request that the discovery deadline be extended for the purpose of deposing Dr. Jahangir on December 14, 2022, at 10 a.m., Leslie Waller on December 16, 2022, at 9 a.m., and Dr. Wright on December 16, 2022, at 1 p.m. It is Plaintiffs' position that moving these deadlines will affect the expert disclosure deadlines of December 5, 2022, and January 9 and February 10, 2023. Because Plaintiffs intend to disclose experts relevant to the issue of liability, the Metro Defendants do not object to extending the expert disclosure deadlines, as well.

6. To accommodate the witness's schedule outside the current case management order, the Parties also seek leave to take Melissa Sweany's deposition on November 10, 2022, at 1:00 p.m.

7. Additionally, Plaintiffs are specifically requesting the Court to indefinitely suspend the discovery deadline until the pendent state proceedings have completed and Plaintiffs have had sufficient time to conduct discovery as it relates to Kia Jarmon and Michael Caldwell, both who are parties to this matter, but the Court has stayed discovery as to such individuals. It is Plaintiffs' position that as to these parties, especially Dr. Caldwell who was an integral part of the Health Director Orders which are the subject of this lawsuit, not only should the discovery deadline be extended as to these parties, but as to discovery in general as other discovery may be required upon completing discovery as to these individuals. Further, it is Plaintiffs' position that given the time required to review voluminous discovery documents turned over to Plaintiffs (over 70,000 pages) and the time remaining prior to the discovery deadline to take depositions upon completion of such review, additional time is needed to conduct additional depositions, such as Hugh Atkins and other individuals who may have relevant knowledge.

8. The Metro Defendants object to an unlimited, indefinite discovery extension, particularly given that Plaintiffs will have already taken 10 depositions after the rescheduled depositions are concluded. The Metro Defendants agree with Plaintiffs that the state proceedings may affect the remaining deadlines in this case, such as the dispositive motion deadline or trial date.

9. The Metro Defendants further agree that a limited period of discovery may be appropriate once the state court proceedings have concluded. Any such discovery should be limited to issues that were previously stayed. The Metro Defendants request that there be limitations on re-opening written discovery, re-deposing any witnesses, and the number of

depositions that could be taken by each party. The Metro Defendants further object to Kia Jarmon being deposed in any forum while her qualified immunity defense is still pending.¹ Because Dr. Caldwell is represented by his own counsel, the Metro Defendants take no position concerning his deposition, other than to note that this case is also stayed as to any claims against him pursuant to *Younger* abstention.

10. Accordingly, the Parties request a case management conference to discuss with the Magistrate Judge the status of the state proceedings and their effect on the current case management order. The District Judge may also want to preside over a conference given that he entered the order staying certain elements of this case under *Younger* pending resolution of the state proceedings.²

¹ Ms. Jarmon has a motion to dismiss pending to which Plaintiffs have never responded. Plaintiffs' response deadline was continued until after the *Younger* stay is lifted. (Order, Doc. No. 107.)

² On November 1, the Parties' counsel conferred by telephone concerning their dispute over the extent of any discovery extension in this case. They are willing to submit their written positions concerning that dispute if the Court elects to set a case management conference to address the issues. Dr. Caldwell's counsel may also wish to participate in any such conference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served via electronic mail to:

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on this 4th day of November 2022.

/s/ Allison L. Bussell
Allison L. Bussell